

**No.SC85557**

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IN THE  
MISSOURI SUPREME COURT

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**JOHN WALLINGFORD,**

Appellant,

vs.

**STATE OF MISSOURI,**

Respondent.

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Appeal from the Circuit Court of  
Buchanan County, Missouri  
Honorable Randall R. Jackson, Judge

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**RESPONDENT'S SUBSTITUTE BRIEF**  
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### **JURISDICTIONAL STATEMENT**

This appeal is from the dismissal of a motion to vacate judgment and sentence under Rule 29.15, filed in the Circuit Court of Buchanan County. Appellant was convicted of three counts of delivery of a controlled substance, §195.211, RSMo 2000, and was sentenced as a prior and persistent offender to three, fourteen-year sentences, to be served concurrently in the Missouri Department of Corrections.

The dismissal of appellant's Rule 29.15 motion was affirmed by the Court of Appeals, Western District, **Wallingford v. State**, No. 61316 (July 31, 2003). This Court has jurisdiction as it sustained appellant's application for transfer pursuant to Supreme Court Rule 83.04. Article V, §10, Missouri Constitution (as amended 1982).

## **STATEMENT OF FACTS**

Appellant, John Wallingford, was charged by amended information with three counts of delivery of a controlled substance in violation of §195.211, RSMo 2000 (L.F. 10-12). This cause went to trial before a jury on February 7, 2000, in the Circuit Court of Buchanan County, the Honorable Randall R. Jackson presiding (Tr. 1).

At the close of the evidence, instructions, and arguments of counsel, the jury found appellant guilty of three counts of delivery of a controlled substance (L.F. 32-34). On March 17, 2000, appellant was sentenced to three, fourteen-year terms to be served concurrently in the Missouri Department of Corrections (Tr. 264, 281; L.F. 38-40).

Appellant appealed to the Court of Appeals, Western District, which affirmed the convictions and sentences in **State v. Wallingford**, 43 S.W.3d 852 (Mo.App. W.D. 2001). In its opinion, the Court summarized the evidence as follows:

On November 18, 1997, Buchanan County Strike Force confidential informant Gerald Ashford arranged to obtain crack cocaine from Wallingford. Before meeting with Wallingford, Ashford met with Strike Force member Frank Till. Ashford was given \$100 to purchase the cocaine as well as an audio recorder (also known as a body microphone) and a transmitter. Ashford, followed by Till, drove to Beth Wallingford's residence. Till parked two blocks away, but could still hear what was going

on through the transmitter. At trial, Till testified that he heard Ashford greet Wallingford by saying, "Hi John."

On November 24, 1997, Ashford again made arrangements to purchase crack cocaine from Wallingford. Another confidential informant, Kimberly Merritt, accompanied Ashford on this buy. This time, Merritt was given the audio transmitter and recording device and the \$100 buy money. Merritt and Ashford met Wallingford in a bar. An unidentified woman accompanied Wallingford. Wallingford and the woman got into Ashford's car and, again, drove to Beth Wallingford's house. Till followed. Merritt and Ashford told them they wanted to purchase a \$100 rock of crack cocaine. Wallingford told them "the guy" was on his way. Soon after, a car pulled up and the unidentified woman approached the driver's side window. Merritt gave Wallingford the money, who then handed it to the unidentified woman in exchange for the drugs.

On January 23, 1998, Ashford again arranged to buy crack from Wallingford. This time he was accompanied by Strike Force member Brian Lupe. As before, Ashford was given an audio transmitter, body microphone and \$100 buy money. Lupe and Ashford drove to Vivian Cooper's house, where Wallingford was staying, with Till following them. At trial, Till was



permitted to testify, over objection, to the conversations he heard between Ashford and Wallingford on the first and third transactions.

**Id.** at 854. The mandate from the opinion affirming appellant's convictions was issued on May 23, 2001.

Appellant filed an unsigned *pro se* Rule 29.15 motion to vacate, set aside or correct the judgment or sentence on August 21, 2001, the ninetieth day after the mandate affirming his convictions was issued (PCR.L.F. 1, 5-79). Counsel was appointed on August 28, 2001, and an amended motion was filed by appointed counsel on November 26, 2001 (PCR.L.F. 1-2, 87-165). Counsel alleged several claims of ineffective assistance of appellate and trial counsel (PCR.L.F. 87-165). On November 30, 2001, appellant filed a *pro se* "motion to correct clerical mistake under Rule 29.12(c)" wherein appellant alleged that he forgot to sign his *pro se* Rule 29.15 motion (PCR.L.F. 166). Appellant requested that the motion court allow him to "correct said unsigned original PCR pro se motion that was mistakenly filed by the said Honorable Clerk of the Court" (PCR.L.F. 166).

On January 7, 2002, appointed counsel filed a "motion to accept movant's declaration pursuant to Tooley v. State" (PCR.L.F. 169-170). Counsel alleged that appellant did not realize he had to sign below both paragraph 18 and the Forma Pauperis Affidavit, and that appointed counsel first learned that the signature was missing just prior to November 26, 2001, the date counsel filed the amended motion (PCR.L.F. 169-

170). On March 13, 2002, the motion court issued its Findings of Fact and Conclusions of Law without an evidentiary hearing and dismissed his Rule 29.15 motion on the basis that the court did not have jurisdiction to allow appellant to cure the defect of his unsigned pleading “since the 90-day jurisdictional period had long run before any request to cure was filed” (PCR.L.F. 172-173).

The dismissal of appellant’s Rule 29.15 motion was affirmed by the Court of Appeals, Western District, **Wallingford v. State**, No. 61316 (July 31, 2003). This Court then sustained appellant’s application for transfer pursuant to Supreme Court Rule 83.04.

## Argument

### **I.**

**The motion court did not clearly err in dismissing appellant's Rule 29.15 motion for postconviction relief based on lack of jurisdiction in that (1) the signature of appellant on the *pro se* motion is a mandatory element for jurisdiction to attach, (2) appellant's attempt to cure the defect was done more than ninety days after the Court of Appeals issued its mandate affirming appellant's conviction and (3) the time limits for filing a motion pursuant to Supreme Court Rule 29.15 are valid and mandatory.**

Appellant alleges that the motion court clearly erred in dismissing his Rule 29.15 motion for post-conviction relief on the basis that jurisdiction had not attached due to appellant failing to sign the *pro se* motion because among other things "counsel and appellant took action to correct the defect as soon as was reasonably possible" (App.Br. 13).

### **A. Facts**

Appellant filed an unsigned *pro se* Rule 29.15 motion to vacate, set aside or correct the judgment or sentence on August 21, 2001, the ninetieth day after the mandate affirming his convictions was issued (PCR.L.F. 1, 5-79). In his motion, appellant failed to sign in the designated space following this declaration:



I, John A. Wallingford, movant in this case, state by subscribing to this petition: that I know the contents thereof; that the above information is, to the best of my knowledge, true and correct; that I have listed every claim known to me for vacating, setting aside or correcting the conviction and sentence attacked in this motion; and that I understand that I waive any claim for relief known to me that I have not listed in this motion.

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Signature of Movant

(PCR.L.F. 9, Appendix A-5).

The page after this declaration contained the Forma Pauperis Affidavit, in which appellant attested that he did not have the funds to pay any costs relating to the action (PCR.L.F.10, Appendix. A-6). Appellant signed the Forma Pauperis Affidavit before a notary (PCR.L.F. 10, Appendix A-6).

Counsel was appointed on August 28, 2001, and an amended motion was filed by appointed counsel on November 26, 2001 (PCR.L.F. 1-2, 87-165). Counsel alleged several claims of ineffective assistance of appellate and trial counsel (PCR.L.F. 87-165). On November 30, 2001, appellant filed a *pro se* “motion to correct clerical mistake under Rule 29.12(c)” wherein appellant alleged that he forgot to sign his *pro se* Rule 29.15 motion (PCR.L.F. 166). Appellant requested that the motion court allow him to “correct

said unsigned original PCR *pro se* motion that was mistakenly filed by the said Honorable Clerk of the Court” (PCR.L.F. 166).

On January 7, 2002, appointed counsel filed a “motion to accept movant’s declaration pursuant to Tooley v. State” (PCR.L.F. 169-170). Counsel alleged that appellant did not realize he had to sign below both paragraph 18 and the Forma Pauperis Affidavit, and that appointed counsel first learned that the signature was missing just prior to November 26, 2001, the date counsel filed the amended motion (PCR.L.F. 169-170). On March 13, 2002, the motion court issued its Findings of Fact and Conclusions of Law without an evidentiary hearing and dismissed his Rule 29.15 motion on the basis that the court did not have jurisdiction to allow appellant to cure the defect of his unsigned pleading “since the 90-day jurisdictional period had long run before any request to cure was filed” (PCR.L.F. 172-173).

### **B. Standard of Review**

Appellate review of a motion court’s denial of postconviction relief is limited to a determination of whether the findings and conclusions of the court are clearly erroneous. Supreme Court Rule 29.15(k); Middleton v. State, 103 S.W.3d 726, 733 (Mo. banc 2003). Findings and conclusions are clearly erroneous only if, after a review of the entire record, the appellate court is left with a definite and firm impression that a mistake has been made. **Id.**

**C. Appellant's unsigned motion was a nullity**

Rule 29.15 provides, in pertinent part, as follows:

A person seeking relief pursuant to this Rule 29.15 shall file a motion to vacate, set aside or correct the judgment or sentence substantially in the form of Criminal Procedure Form No. 40

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. . . If an appeal of the judgment or sentence sought to be vacated, set aside or corrected was taken, the motion shall be filed within ninety days after the date the mandate of the appellate court is issued affirming such judgment or sentence . . . Failure to file a motion within the time provided by this Rule 29.15 shall constitute a complete waiver of any right to proceed under this Rule 29.15 and a complete waiver of any claim that could be raised in a motion filed pursuant to this Rule 29.15.

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The motion to vacate shall include every claim known to the movant for vacating, setting aside, or correcting the judgment of sentence. The movant shall declare in the motion that the movant has listed all claims for relief known to the movant and acknowledging the movant's understanding that the movant waives any claim for relief known to the movant that is not listed in the motion.

Supreme Court Rule 29.15(a),(b), and (d).

Despite appellant's first argument that his unsigned motion had invoked the motion court's jurisdiction because the motion was "sufficient to demonstrate . . . that appellant understood the significance of his actions and consented to the filing of the motion" (App.Br. 14), this Court has held that a movant's signature on the *pro se* motion is a mandatory element for jurisdiction to attach and a failure to sign the motion renders it a nullity. **Tooley v. State**, 20 S.W.3d 519, 520 (Mo. banc 2000).

The signature requirement is not a hollow, meaningless technicality. It constitutes a certificate that the filing is not for any improper purpose and is well grounded in fact and primarily has the objective of the elimination from the court system of groundless actions. Requiring a signature also makes certain the party actually assents to the filing of the action on his or her behalf.

**Tooley**, 20 S.W.3d at 520.

Here, appellant filed an unsigned *pro se* Rule 29.15 motion on the 90<sup>th</sup> day after the mandate affirming his conviction was issued. Because appellant failed to sign his *pro se* motion, it was rendered a nullity and the motion court did not clearly err in dismissing the motion for lack of jurisdiction. **Tooley**, 20 S.W.3d at 520. After all, it cannot be logically maintained that the motion court was clearly erroneous in following



the dictates of a Supreme Court Rule regarding time limits and this Court's precedent regarding the necessity of a signature.

**D. Appellant did not attempt to cure the jurisdictional defect within the 90-day time limits**

Appellant next argues that the motion court should not have dismissed his motion because, although this Court held in **Tooley** that an unsigned Rule 24.035 post-conviction motion does not invoke the motion court's jurisdiction over the case, he falls within an exception under Rule 55.03(a) which states that an unsigned paper shall not be stricken for lack of a signature if the party promptly corrects the omission (App.Br. 18).

Appellant argues that "Rule 55.03(a) says nothing about the timing of the actions to correct the omission of the signature" and that the only requirement is that "the omission be corrected **promptly** after it is *called to the attention of the party or the attorney*"<sup>1</sup>

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<sup>1</sup>Rule 55.03(a) provides:

**Signature Required.** Every pleading, motion, and other paper shall be signed by at least one attorney of record in the attorney's individual name or, if the party is not represented by an attorney, shall be signed by the party. Each paper shall state the signer's address, Missouri bar number, and telephone number, if any. Except when otherwise specifically provided by rule or statute, papers need not be verified or accompanied by affidavit. An unsigned paper shall be stricken unless the omission of the

(App.Br. 18) (emphasis in original). Appellant alleges that he promptly corrected the omitted signature as soon as appointed counsel discovered that the signature was missing (App.Br. 18).

Appellant did attempt to cure the defect by filing a *pro se* “motion to correct clerical mistake under Rule 29.12(c)” and requested that the motion court allow him to “correct said unsigned original PCR *pro se* motion that was mistakenly filed by the said Honorable Clerk of the Court” (PCR.L.F. 166). Appointed counsel also attempted to cure the defect by filing a declaration signed by appellant tracking the same language from the final paragraph he had failed to sign in the original *pro se* motion (PCR.L.F. 169-170). However, both of these attempts, filed on November 30, 2001 and January 7, 2002, were made approximately three and five months after the 90-day deadline had passed (PCR.L.F. 166, 169-170).

Contrary to appellant’s assertion, **Tooley** does not stand for the proposition that Rule 55.03(a) creates a narrow exception to the mandatory time limits of Rule 24.035 or 29.15 when faced with an unsigned pleading. 20 S.W.3d at 520. In **Tooley**, the movant, as in the case at bar, had filed an unsigned *pro se* motion under Rule 24.035. **Id.** This

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correction is corrected promptly after being called to the attention of the attorney or party.

Court noted that not only was the unsigned motion a nullity, but the motion court's jurisdiction had not been invoked. **Id.** This Court further held as follows:

Even though Tooley's unsigned motion was a nullity and in violation of Rule 55.03(a), his cause was dismissed **prior to the expiration of the 90-day time period within which a pro se motion could be filed.** Rule 55.03(a) provided guidance to the court when confronted with an unsigned pleading. 'An unsigned paper shall be stricken unless omission of the signature is corrected promptly after being called to the attention of the attorney or party.' Rule 55.03(a). **Appellant should have the opportunity to correct the deficiency.**

20 S.W.3d at 520 (emphasis added). This Court then reversed the motion court's judgment. **Id.** at 521. It is telling that this Court noted how the motion court had dismissed the movant's action *before* the expiration of the 90-day time period. It logically follows then that **Tooley** stands for the proposition that if a movant fails to sign his pleadings within the required time period, the motion court should not dismiss the action and should give the movant an opportunity to correct the deficiency *within the required time limits.*

However, here, unlike in **Tooley**, appellant did not have time to correct the deficiency in his pleadings because he filed his unsigned *pro se* motion on the 90<sup>th</sup> day after the mandate affirming his conviction was affirmed (PCR.L.F. 5). By the time he

sought to correct the deficient motion, three months later, he was out of time. On the ninety-first day after the Court of Appeals, Western District, issued its mandate, without any sufficient pleadings before it, the motion court lost jurisdiction over appellant's post-conviction motion. **See McBride v. State**, 65 S.W.3d 560, 561 (Mo.App. W.D. 2002). The motion court correctly dismissed appellant's action because, unlike the movant in **Tooley**, appellant had no time to correct the signature omission before the court lost jurisdiction over the case.

Even though Rule 55.03(a) does not impose a time limit in which a party can cure a defect, Rule 29.15(b) clearly does. The provisions of Rule 29.15(a) also note that the rules of civil procedure govern post-conviction motions, but only "in so far as applicable." Therefore, the seemingly open requirement in Rule 55.03(a) that the parties can correct an unsigned document if done "promptly" is not applicable here because of the strict time limits that can be found in Rule 29.15. **See Kilgore v. State**, 791 S.W.2d 393, 395 (Mo.banc 1990) (where this Court held that Rule 55.33, which is applicable to the amendment of pleadings in civil cases, is not applicable to Rule 29.15 proceedings because Rule 29.15(f) governs amendments in Rule 29.15 motions).

That appellant initially filed his unsigned motion on the 90th day and therefore could not file his proper motion within the time limits cannot provide appellant an excuse. It is well established that the time limits for filing Rule 29.15 or 24.035 motions for postconviction relief are valid and constitutional. **Day v. State**, 770 S.W.2d 692, 695

(Mo. banc), *cert. denied* 493 U.S. 866 (1989). State and federal courts in Missouri have repeatedly upheld these time limits. See **Griffini v. Mitchell**, 31 F.3d 690, 692 (8th Cir. 1994); **Duvall v. Purkett**, 15 F.3d 745, 748 n.6 (8th Cir.), *cert. denied* 114 S.Ct. 2753 (1994); **Washington v. State**, 972 S.W.2d 347, 348 (Mo. App. E.D. 1998); **Stidham v. State**, 963 S.W.2d 351, 353 (Mo. App. W.D. 1998); **State v. Sumlin**, 915 S.W.2d 366, 371 (Mo. App. S.D. 1996). The time limitations are reasonable and effective procedural requirements which serve the legitimate interests of avoiding delays in the processing of prisoner's claims and in avoiding stale claims. **Day v. State**, *supra* at 695.

The time limits for filing a motion for postconviction relief pursuant to Rule 29.15 are also mandatory and represent a strict guideline for the filing of such motions. **Burgin v. State**, 969 S.W.2d 226, 227 (Mo. App. E.D. 1998). The failure to file a motion before the expiration of this mandatory and valid time limit “constitute[s] a complete waiver of the right to proceed under the rule.” **Day**, 770 S.W.2d at 696.

Appellant nonetheless raises several reasons for arguing that he should have been allowed to cure his defect. He notes that (1) he signed the last page of Form 40 which pertained to the *in forma pauperis* affidavit, (2) the motion court proceeded with the case and set a hearing date despite appellant’s failure to sign the motion, (3) he informed counsel and the motion court of his failure to sign the pleading and stated his desire to correct the “oversight” (4) his counsel filed a motion to accept a signed declaration by appellant “tracking the language of the declaration of page 5 of Form 4 and (5) his

counsel's timely filing of a signed amended motion should remedy the lack of signature just as the verification defect in a *pro se* motion was cured by a timely filed and verified amended motion in **State v. Wilson**, 813 S.W.2d 833 (Mo.banc 1991) (App.Br. 22-26). Appellant argues that as a result of all of the above factors "all of the essential functions of a signed pleading have been satisfactorily established, and there has never been any confusion or question as to whether [appellant] intended to pursue postconviction relief" (App.Br. 26).

First, as the opinion below from the Court of Appeals noted:

Confirming that the movant agrees to the filing of the post-conviction motion is but one of the reasons for the signature requirement set forth in Tooley. 20 S.W.3d at 520. Other reasons are to certify "that the filing is not for any improper purpose and is well grounded in fact." Id. [Appellant's] signature on the Forma Pauperis Affidavit certified that he did not have the funds to pay any costs relating to the post-conviction action. It did not certify that the filing was not for any improper purpose and was well grounded in fact. Id. [Appellant's] signature on the Forma Pauperis Affidavit was insufficient to satisfy the signature requirement.

**Wallingford v. State**, WD. 61316, slip op. 5, n.4. (Mo.App. W.D. July 31, 2003).

Also, because subject matter jurisdiction can be raised at any time, the fact that the motion court proceeded on the motion before dismissing the action for lack of

jurisdiction is irrelevant. **See** Rule 55.27(g)(3). Even if the motion court had not addressed the jurisdictional defect and proceeded to rule on the merits, the reviewing court would still have a duty to address the issue of jurisdiction on appeal. **See Hall v. State**, 992 S.W.2d 895, 897 (Mo.App. W.D. 1999); **Leftridge v. State**, 29 S.W.3d 839, 840 (Mo.App. W.D. 2000).

Moreover, both appellant and his counsel attempted to cure his deficiency more than three and five months after the 90-day deadline. The notion that the motion court should have conferred jurisdiction because appellant made an attempt to correct the “oversight,” *regardless* of whether it was within the required time limits, neglects to take into account that the time requirements serve the legitimate interests of avoiding delays in the processing of prisoner’s claims and in avoiding stale claims. **Day v. State, supra** at 695. The time limits for post-conviction relief make no provision for good cause shown or excusable neglect. **See State v. Morley**, 68 S.W.3d 443, 445 (Mo.App. W.D. 2001). Arguing that he “inadvertently” failed to sign his motion is akin to arguing excusable neglect. Taking these precepts into account, it is no wonder that this Court in **Tooley** ruled that a movant must be allowed an opportunity to correct an unsigned motion but only if it is done within the time limits.

Finally, whether or not it could be argued that the parties were never “confused” as to whether appellant was seeking post-conviction relief, jurisdiction cannot be conferred by consent of the parties. **State Tax Com. V. Administrative Hearing Com.**,

641 S.W.2d 69, 72 (Mo. banc 1982). As already noted, appellant's failure to file a signed *pro se* Rule 29.15 motion within the 90-day time period rendered his motion a nullity and did not invoke the jurisdiction of the motion court.

**E. A signature on the pro se motion and adherence to the time limits is still required**

Appellant argues that over the years this Court “has eased the requirements for inmates seeking relief to file pro se motions for postconviction relief,” implying that the requirement for a signature should be eased as well (App.Br. 19). While the verification requirements have been eased over time, this Court explained its reasons for doing so in **State v. White**, 873 S.W.2d 590, 594 (Mo.banc 1994), as follows:

Although we wish to avoid any unnecessary technicalities that hinder a movant's ability to file timely a pro se 29.15 motion, **we remain stringent about the time requirements for post-conviction motions.** To alleviate one technicality, however, we hold that henceforth, for purposes of filing a pro se 29.15 motion, **the defendant's signature will be sufficient verification** ‘that has listed all grounds for relief known to him and acknowledging his understanding that he waived any ground for relief known to him that is not listed in the motion.’ Rule 29.15(d). We will still strictly adhere to the requirement that all grounds not raised in the pro se motion are waived, with the exception of those filed in a timely amended 29.15 motion.



(emphasis added). **See also Tooley**, 20 S.W.3d at 520 (where this Court cited to and reaffirmed this Court’s reasoning and holding in **White** and then further held that the “movant’s signature remains as a mandatory element for jurisdiction to attach”).

Again, it is telling that though this Court in **White** sought to alleviate a hindrance to movants by no longer requiring the respective movant’s signature and declaration to be notarized, it still required the movant’s signature in order for the motion to be properly verified at all. It simply cannot be said that the requirement for a signature on a pleading document is either a hindrance to filing the motion or merely a technicality. Numerous documents and causes of actions in our legal machinery hinge on the signature of a party. Signatures are required in contracts, estate planning, and marriages, to name a few. A signature, as simply defined in **Black’s Law Dictionary**, 963 (6<sup>th</sup> Ed. 1991), is the “act of putting one’s name at the end of an instrument to attest its validity.” It is not too burdensome to require a movant to sign a pro se motion and to do so within the required time limits.

The bottom line is that, to date, this Court still holds that a signature is required on the motion to invoke jurisdiction and the motion court was without power to allow appellant to cure the signature defect.

Based on the foregoing, this Court should affirm the dismissal of appellant’s postconviction claim.

## II

**The motion court did not clearly err in dismissing appellant's Rule 29.15 motion for postconviction relief without issuing specific findings of fact and conclusions of law because the motion court's findings were sufficient in that the correctness of the motion court's ruling can be determined through a review of the record.**

In his second point on appeal, appellant claims that the trial court erred in dismissing his Rule 29.15 motion for postconviction relief without issuing sufficient findings of fact and conclusions of law (App. Br. 24). In making this claim, appellant argues that the trial court's failure to issue such findings and conclusions denied him the opportunity for meaningful appellate review of his claims (App. Br. 24).

Appellant raised several claims of ineffective assistance of trial and appellate counsel (PCR.L.F. 87-165). However, as noted in Point I above, the motion court dismissed the motion for lack of jurisdiction. In its order dismissing the appellant's motion, the court made findings of fact that appellant had failed to sign his *pro se* motion and held that

Based upon the holding of the Missouri Supreme Court in Tooley v. State, 20 S.W.3d 519 (Mo. banc 2000), a movant's signature remains as a mandatory element for jurisdiction to attach. A movant's failure to sign his motion renders it a nullity. The facts in the Tooley case are identical to the facts in this case except that in Tooley, the motion court dismissed the motion prior to the expiration of the 90-day jurisdictional period without giving that movant the opportunity to correct the defect. Consequently, the Supreme Court held that under Supreme Court Rule 55.03(a), the movant should have been given the opportunity to cure the defect since there was still time do so before the Court lost jurisdiction. In this case, the 90-day jurisdictional period had long elapsed before any request was made to cure the defect. Movant failed to file a legally sufficient motion for post-conviction relief within the mandatory jurisdictional period. This Court has no jurisdiction to allow Movant to cure the defect since the 90-day jurisdictional period had long run before any request to cure was filed.

This motion must be dismissed for lack of jurisdiction and a judgment for costs taxed against Movant pursuant to the Prisoner Litigation Reform Act, RSMo. § 506.360 et seq. (PCR.L.F. 172-175, Appendix A-7 through A-9).

In a postconviction proceeding, the movant has the burden of establishing by a preponderance of the evidence that he is entitled to relief. Supreme Court Rule 29.15(i); **State v. Fox**, 916 S.W.2d 356, 362 (Mo. App. E.D. 1996). Appellate review of a motion court's denial of postconviction relief is limited to a determination of whether the findings and conclusions of the court are clearly erroneous. Supreme Court Rule 29.15(k); **Middleton v. State**, 103 S.W.3d 726, 733 (Mo. banc 2003). Findings and conclusions are clearly erroneous only if, after a review of the entire record, the appellate court is left with a definite and firm impression that a mistake has been made. **Id.**

Appellant correctly asserts that Rule 29.15 requires the motion court to issue findings of fact and conclusions of law, whether or not a hearing is held. Supreme Court Rule 29.15(j). However, a motion court is not required to issue itemized findings of fact or conclusions of law on every claim raised in a motion for postconviction relief. **State v. Simmons**, 875 S.W.2d 919, 924 (Mo.App. W.D. 1994); **Woods v. State**, 861 S.W.2d 577, 583 (Mo.App. W.D. 1993). Rather, generalized findings and conclusions are adequate if they are sufficient to provide meaningful review on appeal. **State v. Jackson**, 925 S.W.2d 856, 861 (Mo.App. W.D. 1996); **State v. Rowe**, 838 S.W.2d 103, 113 (Mo.App. E.D. 1993). Where the correctness of a motion court's ruling is apparent from the record, no remand is required for the entry of specific findings. **State v. Viviano**, 882 S.W.2d 748, 754 (Mo. App. E.D. 1994).

Here, the record demonstrates that appellant failed to file a signed *pro se* Rule 29.15 motion within the 90-day time period required by the rule. (PCR.L.F. 5). Because as noted in Point I above, an unsigned *pro se* motion renders the motion a nullity and fails to invoke the jurisdiction of the motion court, **Tooley v. State**, 20 S.W.3d 519 (Mo. banc 2000), the correctness of the motion court's actions in dismissing the motion on that basis can be determined from a review of the record, and more specific findings are not necessary. **Viviano**, 848 S.W.2d at 754.

Although appellant has not raised as an issue on appeal the merits of all the claims raised in the amended motion, appellant faults the motion court for not addressing any of the "factual allegations" raised in his amended motion (App.Br. 28-29). However, the motion court did address each and every issue by stating that it was dismissing his motion, thereby including all of the factual allegations raised within it, because it did not have jurisdiction to rule on appellant's motion.

Even if the motion court's findings and conclusions were somehow insufficient, there would be no need to remand for further findings because this Court determines issues of law de novo, without deference to the motion court. **Deck v. State**, 68 S.W.3d 418, 425 (Mo.banc 2002). Here, as already demonstrated above, there was no error of law because the motion court had no jurisdiction.

Therefore, the motion court's findings were sufficient to permit meaningful appellate review of appellant's claims and the motion court did not err in failing to issue

specific findings of fact and conclusions of law. Thus, appellant's second point on appeal must fail.

### **III.**

**The motion court did not clearly err in assessing and collecting costs from appellant because assessment of costs is appropriate under the Section 514.060, and the Prisoner Litigation Reform Act which allows post-judgment costs to be assessed and paid from a prisoner's account.**

Appellant claims in his third point on appeal that the motion court clearly erred in assessing "court costs" from him and ordering him "to pay \$108 under the Prisoner Litigation Reform Act" ("PLRA") for his post-conviction relief because Rule 29.15(b) states that "no cost deposit" shall be required to file a post-conviction relief motion and because the PLRA does not "encompass Rule 29.15 as a civil action" (App. Br. 30).

On March 13, 2002, the motion court issued its Findings of Fact and Conclusions of Law without an evidentiary hearing and dismissed his Rule 29.15 motion on the basis that the court did not have jurisdiction to allow appellant to cure the defect of his unsigned pleading "since the 90-day jurisdictional period had long run before any request to cure was filed" (PCR.L.F. 172-173). The motion court further ordered:

. . . that the correctional facility having custody of the Movant shall withhold funds on a monthly basis, beginning March, 2002, from the Movant's Inmate Account in a sum provided for under the "Prisoner Litigation Reform Act" (RSMo. § 506.320 et. seq.) and forward those funds monthly to the department of revenue pursuant to RSMo. § 506.372, until the sum of \$108.00, which is found to be the unpaid costs due in this case, is paid in full.

(PCR.L.F. 174, Appendix A-9).

Appellate review of a motion court's denial of postconviction relief is limited to a determination of whether the findings and conclusions of the court are clearly erroneous. Supreme Court Rule 29.15(k); **Middleton v. State**, 103 S.W.3d 726, 733 (Mo. banc 2003). Findings and conclusions are clearly erroneous only if, after a review of the entire record, the appellate court is left with a definite and firm impression that a mistake has been made. **Id.** Appellant's claim is without merit. Appellant alleges that since he was proceeding in forma pauperis, no cost deposit is required to file a post-conviction relief motion. Supreme Court Rule 29.15(b). Appellant is correct in that assertion. However, the record reflects that appellant was not required to make a cost deposit before his motion was filed or before it was ruled upon (PCR.L.F. 1-4). A cost deposit is a payment prior to a cause being heard, deposited with the Circuit Clerk as an estimate of the costs of a proceeding or cause. **See** §488.010, RSMo 2000; §488.020, RSMo 2000.

Appellant was not prevented from filing his motion and it was ruled upon prior to any costs being assessed. These costs were not assessed as a cost deposit and therefore did not violate Rule 29.15(b).

Moreover, these post-judgment costs that were assessed were proper under Chapter 488 of the Missouri Revised Statutes 2000; Section 514.060, RSMo 2000, and the Prisoner Litigation Reform Act. §506.366, RSMo 2000.

Section 514.060, RSMo 2000, provides that “[i]n all civil actions, or proceedings of any kind, the party prevailing shall recover his costs against the other party, except in those cases in which a different provision is made by law.”

The Prisoner Litigation Reform Act provides that “[i]f a judgment against an offender includes the payment of costs, the offender shall pay the full amount of costs ordered in the same manner as provided in section 506.372 or as otherwise provided by law.” § 506.378, RSMo 2000. Section 506.372 provides the manner by which a prisoner may pay court costs in monthly installments, based on the offender’s income or the average monthly balance in the offender’s account.

Under the plain language of these statutes, they apply to “civil actions” and contain no exclusion for post-conviction relief challenges. §506.366, RSMo 2000; §514.060, RSMo 2000. This Court has ruled that a post-conviction relief action is a civil proceeding. **State v. Basile**, 942 S.W.2d 342, 362 (Mo.banc 1997). Furthermore, there



are no provisions in Rule 29.15 which specifically prohibit the assessment of post-judgment costs.

The Court of Appeals, Western District, opinion below noted that PLRA statutes Sections 506.378 and 506.372 “presupposes the authority to enter an order assessing costs against the indigent offender” and that “the PLRA did not provide the motion court with the authority to assess costs against” appellant. **Wallingford v. State**, WD. 61316, slip op. at 8, 11(Mo.App. W.D. July 31, 2003). However, Section 514.060 gives the motion court authority to assess the post-judgment costs as it provides that “[i]n all civil actions, or proceedings of any kind, the party prevailing shall recover his costs against the other party, except in those cases in which a different provision is made by law.” Here, there are no provisions within Rule 29.15 which prohibit it, so Section 514.060 does apply.

Appellant correctly notes that there are various provisions within the PLRA which do not apply to Rule 29.15. However, application of the above referenced statutes to post-conviction relief proceedings does not conflict with the post-conviction rules. Although it is true that a cost deposit is not required to file a motion under Rule 29.15, nothing prevents assessment of post-judgment fees. Appellant was not required to pay a cost deposit but rather was charged post-judgment costs, not in conflict with the purpose of Rule 29.15. The payment of fees from appellant’s prison account is proper.

### **CONCLUSION**

For the foregoing reasons, the judgment of the motion court should be affirmed.

Very truly yours,

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**CERTIFICATE OF COMPLIANCE AND SERVICE:**

I hereby certify:

1. That the attached brief complies with the limitations contained in Missouri Supreme Court Rule 84.06 (b) and contains 6, 557 words, excluding the cover, this certification and the appendix, as determined by WordPerfect 9 software; and
2. That the floppy disk filed with this brief, containing a copy of this brief, has been scanned for viruses and is virus-free; and
3. That a true and correct copy of the attached brief, and a floppy disk containing a copy of this brief, were mailed, postage prepaid, this 4th day of February, 2004, to:

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